

1 **JIM JOHNSON,**
2 a witness, called by the plaintiff, having been first duly
3 sworn, testified as follows:

4
5 MR. ROBERTSON: I'm sorry, is the witness sworn?

6 THE COURT: Yes, he's been sworn.

7
8 DIRECT EXAMINATION

9 BY MR. ROBERTSON:

10 Q Sir, would you please introduce yourself to the jury.

11 A My name is Jim Johnson.

12 Q And where do you live, Mr. Johnson?

13 A Pittsburgh, PA.

14 Q And just briefly, give me your educational background.

15 A Let's see. I have an associate's degree in computer
16 science. I also have a bachelor's degree in applied science
17 from Slippery Rock University.

18 Q And have you ever taken any graduate classes?

19 A I did start a graduate study but, unfortunately, never
20 finished.

21 Q What do you currently do for a living, sir?

22 A I'm the APV of information technology for a company called
23 Utility Service Partners.

24 Q You said AVP. What does that stand for?

25 A Assistant vice president.

1 Q And IT, is that information technology?

2 A Yes.

3 Q And what is the business of Utilities Service Partners,
4 sir?

5 A We provide service line warranties to customers that we
6 will come out and replace or fix your utility lines if they
7 break.

8 Q And utility lines, what do you mean when you are using
9 that? Are you talking electrical lines?

10 A Actually, yes. Electrical lines, gas lines, sewer lines.
11 Most homeowners don't realize in their area that they own the
12 line from the main, which is owned by the utility, to the
13 house.

14 Q And before that company that handles these utility
15 services, you worked in the information technology department;
16 is that right?

17 A I'm sorry.

18 Q You worked in the information technology department for
19 that company?

20 A Yes.

21 Q At some point in your career, did you work with Fisher
22 Scientific?

23 A Yes.

24 Q When was that?

25 A I believe I started in 1986 and up until 1998. About 12,

1 13 years.

2 Q And what area of the company did you work at in Fisher
3 Scientific?

4 A In the information technology group.

5 Q Just briefly, could you tell me some of the positions you
6 held while you were at Fisher during the period of time from
7 1986 to 1998?

8 A Sure. I started there as a programmer analyst. I worked
9 my way up to project leader, ultimately became a supervisor and
10 manager of product development.

11 Q And you are one of the named inventors on the three
12 patents in suit here, the patents that are at issue, the '683,
13 '516, and '172 is how we've been referring to; is that right?

14 A Yes.

15 Q And did you work on that project with both Mr. Momyer and
16 Mr. Kinross?

17 A Yes.

18 Q Mr. Momyer has testified yesterday and today to sort of
19 the big overview of the picture of the development of the
20 inventions in your electronic sourcing system. What I'd like
21 to focus on today with you is what, if any, necessary
22 modifications, revisions, reprogramming, or new things needed
23 to be done in order to modify the RIMS system into what became
24 the subject matter of the these patents, the electronic
25 sourcing system.

1 So at a high view for now, could you just identify the
2 areas that you were involved in that project?

3 A The areas I was involved in was to reengineer the programs
4 basically to be able to build a graphic user interface that the
5 end user could use. We also modified the requisitioning
6 portion of the system to be able to handle multiple products
7 from various vendors.

8 In addition to that, we also allowed for that single
9 requisition to be broken up into multiple purchase orders by A
10 vendor. We also built the interface actually over to the
11 electronic catalog as well.

12 Q I'm sorry, I didn't hear your last answer. You built the
13 interface to the electronic catalogs?

14 A There was an interface we built to be able to pass
15 information from the requisitioning system over to the
16 electronic catalog system, yes.

17 Q What about the issue of inventory availability, did you
18 have to do anything to modify the RIMS system in order to have
19 that functionality in the inventions of your electronic
20 sourcing system?

21 A Yeah. Basically we used, tapped into a technology for EDI
22 to be able to go out to a vendor and get some pricing and
23 availability as well.

24 Q What about, did you have any involvement in any of the
25 business logic necessary for the functionality of the

1 electronic sourcing system and any modification that had to
2 occur with RIMS?

3 A The business logic, yeah, we had to actually strip -- the
4 RIMS system had character-based application which we called a
5 green screen at the time. That all had to be torn out of the
6 code, and we had to modularize the business code in order to be
7 able to interface with the new graphical user interface.

8 Q We have now what I think are six separate topics. If we
9 could go through them one by one and tell me in the simplest
10 terms as possible, what is it, in fact, you had responsibility
11 for doing with these revisions, modifications, reprogramming,
12 or creating from scratch some of these things.

13 So let's start with you indicated this construction of a
14 graphical user interface, and we've heard that term before.
15 Tell us what you understand that term to mean.

16 A Graphical user interface is basically the interface that
17 the end user sees when interacting with the system.

18 At that time, most of the systems, especially the
19 mainframe systems, were character-based, so they started at the
20 left-hand corner and would go to the bottom right hand of the
21 corner, and it would display characters, numbers, dashes,
22 colons, things of that nature. Very cryptic.

23 So in order for us to be able to allow for an end user,
24 like a researcher or lab technician, to use the system, we
25 wanted to generate or create a graphical representation of what

1 they would be doing, selecting products, placing orders,
2 selecting information to select the type of orders, that kind
3 of thing. So we built this graphical user interface to be able
4 to make it easier, essentially, for the user to use.

5 Q Would this graphical user interface make it easier for the
6 user of your invention in the electronic sourcing system to
7 utilize its features and functionality?

8 A Yes.

9 Q The RIMS technology, did it have a graphical user
10 interface?

11 A No.

12 Q Did it have this clunky character-based interface you were
13 talking about?

14 A Yeah. As I said, it was a character-based application.
15 It was originally designed for a Fisher Scientific CSR to
16 utilize, so it required a large number of hours to train this
17 person on how to use it. There were abbreviations in there,
18 things like, for example, if we wanted them to enter a stock
19 number, the title of the field was STKNO. If we wanted them to
20 enter a particular product type, it was just characters, PT.
21 So unless you understood what that meant, you wouldn't know
22 what to enter into that system.

23 Q Are you familiar with the term green screen?

24 A Yes.

25 Q What is a green screen?

1 A And old mainframe terminology where the characters on the
2 screen are basically green.

3 Q Did the RIMS have a green screen technology?

4 A Yes.

5 Q I'm sorry?

6 A Yes.

7 Q And were you involved in programming and creating this
8 graphical user interface for the electronic sourcing system?

9 A Yes. I was involved in providing all the requirements to
10 the people that worked for me to develop it, yes.

11 Q Did you supervise those people?

12 A Yes.

13 Q You also mentioned you had to design the interface for
14 communication between the requisitioning and purchasing program
15 and the catalog database. Could you tell me what that entailed
16 and why that was necessary?

17 A Well, it was necessary because the initial idea was to
18 supply a system that would allow us to do a complete supply
19 chain management end to end, be able to select products,
20 process the requisition, and ultimately generate a purchase
21 order.

22 In order to do that, we needed to connect the
23 requisitioning management system to this electronic catalog, so
24 we built some APIs, which are application program interfaces,
25 that had a two-way communication channel basically between the

1 requisition management system and the cataloging system so we
2 could pass data back and forth without losing any information.

3 Q Did you have that interface in the RIMS system, or did
4 that have to be created?

5 A No, that was not in the RIMS system. That had to be
6 created.

7 Q Why is that?

8 A It wasn't there.

9 Q Why --

10 THE COURT: You asked for it.

11 Q Let me see if I can rephrase the question. Why did you
12 feel that it was necessary?

13 A Well, it was necessary because in order for us to provide
14 a complete shopping experience without frustrating the user, we
15 wanted to seamlessly be able to process the information they
16 were selecting in the catalog into the requisition without them
17 having to look at a catalog, go over to the requisition system,
18 type it in, go back to the catalog, look for another product,
19 write it down, go over to the requisition system and type it
20 in. We wanted a seamless interface so the user just had to
21 point and click and push a button, and all that data would flow
22 automatically.

23 Q The way you described the difficulty you were trying to
24 overcome, did the RIMS system even have that kind of primitive
25 technology?

1 A As far as communicating with a catalog?

2 Q Yes.

3 A No.

4 Q You also mentioned something about splitting the
5 presentation layer, I believe, from the business logic. Do you
6 recall that?

7 A Yes.

8 Q What was that?

9 A RIMS was designed as a very traditional, what I'll call
10 CICS COBOL mainframe system.

11 Q You have to stop there, and we're going to say again,
12 we're going --

13 A Keep it high level. I'm sorry. I get technical
14 sometimes.

15 THE COURT: It's okay, but it would be better you all
16 don't talk while each other are talking. You can be technical
17 all you want to.

18 Q You mentioned CICS COBOL. I think I interrupted you, so
19 why don't you finish your answer. What is CICS COBOL?

20 A COBOL is a common business oriented language. It's a
21 program language we used to develop the original RIMS system.

22 CICS is a transaction processor which allows COBOL
23 programs to run in that environment. It's a very traditional
24 system, very geared towards businesses that want to process a
25 lot of data very quickly.

1 Q And so did you need to be able to have that, to modify
2 that capability from RIMS to your electronic sourcing system
3 inventions in order to have that capability of transferring and
4 moving around a lot of data?

5 A Well, I mean, what you asked me is what did we do to the
6 business logic to remove the presentation layer. What we
7 needed to do was we needed to basically reengineer those
8 programs so they no longer worked with the green screens that I
9 mentioned earlier.

10 Those green screens were ripped out of those programs, and
11 we converted those programs into basically what we now call
12 business object that all it did was manage the business logic.
13 Then we built the interfaces to the graphical user interface
14 so, in short, the GUI could interface to the business logic.

15 Q Was that an important aspect for making your invention
16 user-friendly and functional?

17 A Yeah. It was pretty much a requirement.

18 Q And just so I'm clear, that wasn't available or present in
19 the RIMS system?

20 A No.

21 Q You also, I think, mentioned that you had to modify
22 requisition coding; is that correct?

23 A Yes. We -- at the time, the RIMS system could only
24 communicate to the Fisher mainframe, Fisher being Fisher
25 Scientific. The programs were primarily sourcing those

1 products all to Fisher, so it was one requisition and
2 ultimately one requisition that was sent to the Fisher
3 mainframe as an order. So basically we changed those programs
4 to be able to accept, in the requisitioning process, the
5 ability to add multiple products from different vendors to a
6 single requisition.

7 Q In modifying this requisition coding, did it also address
8 any issues involving the purchase orders from these
9 requisitions?

10 A Yes. As an end result, once the requisition was created,
11 the user could say, yes, I want this order, go ahead and place
12 it. The system would then take that requisition and by vendor
13 create multiple purchase orders with the products associated to
14 that vendor.

15 Q You also mentioned this purchase order creation capability
16 that you needed to do. Can you tell me how that changed from
17 the prior RIMS system, if at all, to -- for purposes of your
18 invention?

19 A Well, as I said earlier, RIMS could only communicate to
20 the Fisher mainframe, so the order was actually created through
21 the Fisher mainframe system. So in the electronic sourcing
22 system, what we needed to do was to be able to create purchase
23 orders that could be sent out to vendors through one of a
24 couple of different mechanisms to get the purchase order over
25 to the appropriate vendor.

1 Q When you say sent out, that could be sent out from a local
2 computer where an individual was using your electronic sourcing
3 invention to make a request for an item from multiple vendors?

4 A It was a computer that was located at the customer
5 location, yes.

6 Q The end user could utilize the electronic sourcing system
7 in order to accomplish the goals of your invention; is that
8 right?

9 A Yes. They would be working on a work station
10 theoretically in their laboratory or in their office
11 communicating to a server located on the network.

12 Q And that server on the network would have information
13 available to transmit that contained information about products
14 that were available?

15 A That's where the business logic resided, yes.

16 Q You also mentioned this inventory availability issue that
17 had to be addressed with respect to modifying or revising,
18 reprogramming the RIMS system in order to achieve the goals of
19 your electronic sourcing system. Do you recall that?

20 A Yes.

21 Q What did that entail?

22 A End users, in other words, for them to make a good
23 decision as to whether or not to make a purchase, they want to
24 know pricing and availability, how much is it going to cost
25 them and am I going to get the product shipped, or is it going

1 to go on backorder. In order to do that, we introduced a
2 technology of EDI to be able to generate -- back then what it
3 was called was a request for quote, to be able to send to a
4 vendor to say, can you give me the information about this
5 product, do you have it in stock, and how much is it going to
6 cost me.

7 So that request for quote would be responded to by the
8 vendor with a response to request for quote that would give us
9 that information.

10 Q Now, RIMS had some inventory availability capability with
11 regard to Fisher products; is that right?

12 A Yes, it did.

13 Q Did RIMS have this inventory availability capability you
14 just described with regard to multiple vendors?

15 A No.

16 MR. ROBERTSON: That's all I have. Please answer
17 whatever questions Mr. McDonald may have.

18 MR. McDONALD: I take it, Your Honor, you want to
19 keep us rolling, rolling, rolling.

20 THE COURT: I don't think you have many questions, do
21 you? He hasn't been on but about 15 minutes or so.

22 MR. McDONALD: That's true.

23 THE COURT: I don't see how you are going to go
24 beyond that, but if we do, we'll see where we are in
25 15 minutes.

1 CROSS-EXAMINATION

2 BY MR. McDONALD:

3 Q Mr. Johnson, I'd like to talk about the graphical
4 interface user issue. You were describing, I think, the steps
5 you took to get an actual physical embodiment of the product
6 put together in your answers; right?

7 A That's what we did to build the system, yes.

8 Q I'd like to talk to you about the system as it existed
9 when you actually filed the patents in this suit; okay?

10 A Okay.

11 Q The patents, if you have Exhibit 1 before you, that was
12 filed August 10th of 1994; correct?

13 MR. ROBERTSON: Your Honor, I'm going to object.
14 This is outside the scope of my direct.

15 THE COURT: I don't know if it is or isn't yet.
16 Let's wait until we get a question that deals with the
17 graphical user interface system first. That's what he wants to
18 talk about. There may be an objection, Mr. Johnson, so don't
19 answer the question. We'll see if there's an objection and
20 ruling.

21 THE WITNESS: Okay.

22 THE COURT: So as of -- you are talking as of
23 August 10, 1994, what?

24 Q So on that date, that's when you filed the patent
25 applications in this case; correct?

1 A Are you looking at --

2 Q The '683 patent, page one of that document has a filing
3 date of August 10th, 1994; correct?

4 A Yes.

5 MR. McDONALD: Put that up on the screen. Can we
6 switch so that it will help to put it up on our screen. Thank
7 you.

8 Q So, Mr. Johnson, when you filed this application, did you
9 try to disclose the best way of using your invention that
10 existed at the time you filed?

11 MR. ROBERTSON: Your Honor, I didn't ask anything
12 about the best way or the process with the patent. I asked him
13 what he did with respect to the modifying the RIMS to achieve
14 the goals of the electronic sourcing system patent.

15 MR. McDONALD: I can rephrase it a little, I think.

16 THE COURT: Yes, I think you need to.

17 Q Mr. Johnson, did you file an application based on the form
18 of the system as it existed at the time you filed the patent
19 application?

20 A (No response.)

21 THE COURT: You seem not to understand. If you
22 don't, say I don't understand.

23 THE WITNESS: I was waiting to see whether I should
24 or not based on --

25 THE COURT: Okay, I understand. You are doing just

1 what I asked you to do. Thank you.

2 THE WITNESS: I tried to comply.

3 THE COURT: Sometimes we get a head of ourselves over
4 here, Mr. Johnson. He didn't object, so it was okay.

5 MR. ROBERTSON: There's been no answer yet, so I
6 didn't ask anything about the patent application, Your Honor.
7 That's my point. I asked what they did. They modified the
8 RIMS system.

9 THE COURT: They had to get to it to get to what was
10 patented, I think. The question was, basically what did --
11 what modification -- what modifications was done to RIMS to get
12 to the patents-in-suit, I think.

13 MR. McDONALD: That's exactly what I'm talking about.

14 THE COURT: So the patents-in-suit would include the
15 filing of the application to those patents, I would think, so I
16 think that the objection is overruled. Why don't we get him to
17 answer the question -- ask the question again, and then you can
18 answer it, okay.

19 Q Mr. Johnson, you filed the patent on August 10th, 1994, on
20 the system as it existed at that time; is that fair?

21 A We filed the patent based on the ideas of what we wanted
22 to build is basically where we were at at that time. We had
23 started building prototypes. A prototype hadn't been completed
24 as of yet.

25 Q Had you completed the graphic user interfaces yet?

1 A At the time of the filing the patents, the final product
2 was not completed, no.

3 Q In fact, isn't it true that the only user interfaces
4 that's actually shown in the patents-in-suit are all the old
5 text-based style interfaces, and you don't show any actual
6 graphic user interfaces?

7 A We were in the midst of building the prototype.

8 THE COURT: What he asked you was whether you
9 understand any of the figures; is that right, or the
10 embodiments, any of the embodiments shown in the patent to have
11 any pictures in them as opposed to just text. Is that your
12 question?

13 MR. McDONALD: Well, it has to do with the user
14 interface.

15 THE COURT: In the user interface. Is that your
16 understanding?

17 THE WITNESS: You are correct. We did not have the
18 graphical user interfaces ready to be put into the patent.

19 THE COURT: Because you were still working on them
20 even though you conceived the idea; is that your point?

21 THE WITNESS: Yes.

22 Q Well, is it true that in the appendixes of the patent --
23 you can turn to column 19 of the '683 patent, Exhibit 1. If we
24 can blow up appendices one and two there. Those are two
25 examples of user interfaces being described in your patent;

1 right?

2 A Yes.

3 Q Those are not graphic user interfaces; right?

4 A No, they are not.

5 Q Those are these text-based ones, I think you described as
6 clunky; is that right?

7 A That's correct.

8 Q These are very similar to the RIMS style user interfaces;
9 right?

10 A That's correct.

11 Q If you had in development any graphic user interfaces,
12 maybe they weren't in an actual physical product yet, would you
13 have put them in the patent application to show that
14 alternative embodiment that uses graphical user interfaces?

15 A If I understand your question correctly, yes. If we had
16 the prototype screens completed, they would have gone into the
17 patent.

18 Q I'll give you a chance to look at all the appendixes and
19 the figures of Exhibit 1 here, because if we go, for example,
20 to columns 21 and 22 of the next page, there's some more
21 appendixes there; correct? Appendixes three, four, five, six,
22 and seven; right?

23 A Yes.

24 Q And then there's a few more on columns 23 and 24 on the
25 next page, continuation of appendix seven, then appendix eight,

1 nine, and ten; right?

2 A Can I go back to 21 and 22?

3 Q Sure.

4 A Appendix six and seven are part of the electronic catalog,
5 and at that time the technology that we had to do print screens
6 was pretty archaic. So these are not the RIMS screens. Those
7 were actually part of the cataloging system, and they came out
8 sort of looking like character-based, but that was just the
9 technology we had at the time to be able to produce a printed
10 image.

11 THE COURT: You mean the five and six or six and
12 seven had pictures on them to begin with?

13 THE WITNESS: They were, if I recall correctly, the
14 six and seven at the bottom where it says on six, the help, the
15 cancel, the delete, the delete all, order, and description was
16 part of the electronic cataloging system, and those were
17 actually buttons. But they didn't come up on that -- when we
18 tried to print it out, it didn't print real well.

19 THE COURT: You tried to print it out in preparing
20 the patent application?

21 THE WITNESS: Yes, sir.

22 THE COURT: Or patent documents.

23 Q But as shown here, would you agree this is just text and
24 there's no graphics?

25 A As it appears here, yes.

1 Q Would you agree that there are other figures in the patent
2 that show graphical features such as figures 1A and 1B, and
3 graphics can be presented other than in text and word in this
4 patent?

5 A Are you referring to the flow charts?

6 Q Figures 1A and 1B is what I was referring to.

7 A Yes. Those are flow charts. Those could be created by
8 using a template with a pen and pencil.

9 Q You could have done that and depict any graphic user
10 interfaces that were in existence at the time; right?

11 A They would look archaic like this does as well.

12 THE COURT: Are you saying that appendix six and
13 seven, as you really would look at them as opposed to your
14 capacity to print them out, would constitute graphic user
15 interfaces.

16 A It looks a lot better than the printout.

17 THE COURT: Well, is that answer yes or no.

18 THE WITNESS: Yes.

19 THE COURT: It's appendices six and seven, graphic
20 user interfaces, which you tried to put into the patent but
21 were limited in accurately depicting them because of the
22 limitations of your printing system that you used to prepare
23 the patent application; is that right?

24 THE WITNESS: That's correct.

25 Q Was there anyplace in the patent where you indicated that

1 those depictions in appendixes six and seven actually did not
2 fully and accurately depict the screens as you intended?

3 MR. ROBERTSON: Objection, Your Honor, relevancy.

4 THE COURT: Overruled.

5 THE WITNESS: I'm sorry.

6 THE COURT: Did you tell anybody in the patent
7 documents here that the depictions of six and seven weren't
8 what you wanted them to be?

9 THE WITNESS: I believe we used the terminology of
10 there are examples, so it's just one way to do it. I believe
11 we did.

12 Q With respect to the concept of taking a requisition and
13 generating multiple purchase orders, I believe you indicated
14 that there was some changes to the RIMS system that you made;
15 is that right?

16 A Yes.

17 Q Were those changes to the database structures that enabled
18 that functionality?

19 A There were database changes, yes.

20 Q And with respect to those database structure changes, is
21 there anything in this '683 patent related to those changes
22 specific to generating multiple purchase orders?

23 A Specifically database changes? Is that what you are
24 asking?

25 Q Database changes specific to generating multiple purchase

1 orders.

2 A I'd have to go back and look. I don't recall mentioning
3 database changes specifically.

4 Q Are you familiar with the RIMS '989 patent?

5 A Somewhat, yes.

6 Q Do you recall that that has some flow charts that
7 specifically describe questions and routing to go through the
8 process of generating purchase orders?

9 A I believe there were flow charts in there that described
10 the process.

11 Q Are there any flow charts in the patents in this case,
12 '683 patents -- let's just focus on the '683 to keep this
13 simple. Are there any flow charts in the '683 patent that
14 depict the process of generating purchase orders?

15 A It's rudimentary, but, yeah, there's one.

16 Q Okay. Would you point me to that, please.

17 A It's pretty basic. That's figure three.

18 MR. McDONALD: Put that up, please.

19 THE WITNESS: Where it represents a requisition
20 management program generating a purchase order --

21 MR. McDONALD: For the '683 patent. Excuse me, I'm
22 sorry, Mr. Johnson. I didn't mean to interrupt. I want to
23 make sure the screen is coordinating to what you're saying
24 here.

25 THE COURT: What is this again so we've got it, and

1 the jury will have your testimony in connection with figure
2 three? What is it, sir?

3 THE WITNESS: Which figure?

4 THE COURT: Figure three.

5 THE WITNESS: Figure three, yes.

6 THE COURT: Repeat what it is so the jury will be
7 able to put together the image with your testimony. What is
8 it?

9 THE WITNESS: It's a flow chart of the process of
10 processing a requisition through the electronic sourcing module
11 which would be the cataloging system, doing the inventory
12 sourcing and requisition management process, generating a
13 purchase order or purchase orders, multiple, either through
14 fax, mail, print, or through the host processing.

15 Q All right, so when I asked you about whether there's any
16 flow charts that depict generating multiple purchase orders,
17 this is the figure that you pointed to; correct?

18 A Yes.

19 Q Is there a particular part of this figure that actually
20 relates to generating multiple purchase orders or not?

21 A Other than 114 where it says purchase orders being
22 multiple.

23 Q So you have that one oval, 114, that says purchase orders.
24 That's the only figure in the '683 patent that specifically
25 talks about purchase orders; is that right?

1 A It's the only representation that we put in, I believe.

2 Q Finally, I think you mentioned that the RIMS system did
3 not communicate with the catalog. Did I understand that right?

4 A That's correct.

5 Q The RIMS system did have a parts master; right?

6 A It had a part master, yes.

7 Q You didn't consider that a catalog, though, for purposes
8 of your answer; is that right?

9 A No.

10 Q So when you say no, you are agreeing with me?

11 A I did not consider that a catalog.

12 Q Thanks for fixing the question. Also the RIMS system had
13 a host database with Fisher products on it as well; right?

14 A It had -- yes.

15 Q And when you answered that question about RIMS not
16 communicating with a catalog, did you consider that Fisher
17 database of items to be a catalog or not?

18 A No.

19 MR. McDONALD: No further questions. Thank you, Your
20 Honor.

21

22 REDIRECT EXAMINATION

23 BY MR. ROBERTSON:

24 Q Mr. Johnson, do you have the '683 patent in front of you?

25 It's Plaintiff's Exhibit Number 1. You testified about this

1 graphical user interface or GUI; right?

2 A Yes.

3 Q Let me see if I can't direct you to some disclosure in the
4 patent other than these figures that discuss this aspect of
5 your invention. Could you turn to column 17, if you would,
6 sir. Starting at about line 13, shell program, 252, down to
7 line 15.

8 A Starting at shell program 252, you said?

9 Q Yes.

10 A Okay.

11 Q Disclosed here in your patent that shell program 252 and
12 graphical user interface, preferably Easel workbench program of
13 OS/2 the listing items. Let me start over because it should be
14 the full sentence. I apologize.

15 It says, local computer 220 is provided with programs
16 including requisition/purchasing system 240, shell program 252,
17 and a graphic user interface 254, preferably Easel workbench
18 program 254 for OS/2 for listing items. Do you see that?

19 A Yes, sir.

20 Q Was the Easel Workbench program for OS/2 a commercially
21 available graphic user interface?

22 A It was a commercially usable tool that we could use to
23 build the graphic user interface, yes.

24 Q Is that the tool you were using?

25 A That was the tool we built the prototype in, yes.

1 Q When it says for the commercially available tool, Easel
2 Workbench program for OS/2, what does that OS/2 stand for?

3 A Operating system two. That was a competitor to
4 Microsoft's Windows.

5 Q So that was being -- this Easel Workbench program for
6 creating a graphical user interface could run on this operating
7 system?

8 A Yes.

9 Q Were you doing that at the time?

10 A Yes.

11 Q Let me direct you, if I can, to that same column, down to
12 the paragraph that begins normally, starts at about line 23 and
13 goes down to about line 26, and this is describing one
14 particular environment in which this CSR can be using your
15 electronic sourcing system; is that right?

16 A Yes.

17 Q Nothing prevented a CSR or ultimately a customer end user
18 from using this electronic sourcing system if they had it
19 available to him or her; is that right?

20 MR. McDONALD: Objection, Your Honor, outside the
21 scope of cross.

22 THE COURT: I don't think so. Overruled.

23 A Yes.

24 Q So the answer to my question is nothing prevented that?

25 THE COURT: Why don't we let him answer the question.

1 He's doing a better job than you all.

2 MR. ROBERTSON: I thought it was confusing on the
3 record.

4 Q Could a CSR and end users use your electronic sourcing
5 invention?

6 A Yes. Anyone who had access to the system could use it.

7 Q And in this instance, it's saying here that a CSR can
8 create order lists for customers by entering distributor
9 catalog numbers into graphic user interfaces 254 and connecting
10 to the distributor mainframe for price and availability. Do
11 you see that?

12 A Yes.

13 Q Is that a feature of the invention that utilized graphical
14 user interface?

15 A That was part of it.

16 Q This distributor catalog, that's another vendor that the
17 customer, or in this case the CSR, can go out and obtain that
18 kind of information and have it returned to the GUI; correct?

19 A That's correct.

20 Q Go down a little further to about line 39, starts the
21 resultant lists, and go down to about line 44. States here,
22 the resultant lists of products are then transferred to shell
23 program 252 to a work-in-progress requisition 260 and then
24 entered from graphical user interface 254 directly onto
25 distributor's mainframe computer as orders from the applicable

1 customer to distributor. Do you see that?

2 A Yes.

3 Q Is that another disclosure of the use of the graphical
4 user interface, to display these work-in-progress requisitions
5 on the GUI?

6 A Yes.

7 Q If you'll go down in the same column, sir, to the line
8 that begins with line 60 and stop right about line 64, right
9 after figure 1A, are you with me?

10 A Yes.

11 Q It states here, file server 200 in that environment
12 contains TV/2 search program 250, Easel graphical user
13 interfaces 254, and multiple catalog databases 236 containing
14 catalogs similar to the Fairmont and NIST catalogs described
15 above for embodiment of figure 1A. Do you see that?

16 A Yes.

17 Q Fairmont and NIST, were they companies that were going to
18 be included as having catalog data on your invention?

19 A They were some of them, yes.

20 Q Were they competitors of Fisher?

21 A Fairmont, I don't believe, is a competitor, and I don't
22 believe NIST necessarily was a competitor either. I don't
23 recall specifically.

24 Q But you were using these as examples of electronic
25 catalogs that could be presented with the graphical user

1 interface using electronic sourcing --

2 A Yes. We were looking for multiple vendor catalogs. We
3 were not necessarily concerned about which vendor they were.

4 Q But my point is, when looking at these catalogs, could
5 they be displayed to the end user -- were they intended to be
6 displayed to the end user on a graphical user interface?

7 A Yes.

8 Q Is that what is disclosed here?

9 A Yes.

10 Q Let me just direct you to just one more. I think there
11 are several more examples, but I won't belabor the point, but
12 at column 18 starting at about line 18, there's a sentence that
13 starts once responses. Do you see that?

14 A Yes.

15 Q Says, once responses from either or both have been
16 obtained, the distributor purchasing employee can use the item
17 list in Easel interface 254 to create one or more of the
18 following purchase orders; do you see that?

19 A Yes.

20 Q Was that a manner in which a graphical user interface
21 could be used to disclose the purchase orders?

22 A Yes. Again, it goes back to anybody who had access to the
23 graphical user interface could use the system.

24 Q Is graphical user interface 254 depicted in figure 1B in
25 the patent?

1 A Yes. 254 is in this figure.

2 Q There was a question about disclosure of database changes,
3 and I want to see if I could direct you to column 10 of the
4 '683 patent starting at about line 55 through line 64. Starts
5 out, by contrast?

6 A Yes.

7 Q States there, by contrast, an item selected from the
8 Fairmont catalog would be transferred to Fisher RIMS system 40
9 with the vendor number of Fairmont and would be recognized
10 during inventory sourcing as either a type 07 product that
11 distributor orders from Fairmont or as a type 05 item that
12 customer orders from Fairmont as an administrative purchase.

13 Do you know what type 07 products were?

14 A You know what? I'm drawing a blank on seven.

15 Q Let me see if I can have one moment. Maybe I can find it
16 for you. Is the Fairmont distributor a third-party distributor
17 of products?

18 A I'm sorry, where are you?

19 Q Back at that section talking about Fairmont distributor of
20 vendor product, it says, type 07 product that distributor
21 orders from Fairmont?

22 A Where are you?

23 Q I'm sorry, back at column ten, line 55, through down about
24 60.

25 A Okay.

1 Q What does it indicate a type 07 product is?

2 A That's what I'm having a hard time recollecting.

3 Q It says that distributor orders from Fairmont in
4 parentheses right after it. Do you see that?

5 A Yes.

6 Q Fairmont is not Fisher, is it?

7 A No.

8 Q So is that another vendor that's making product available?

9 A That's another vendor that we wanted to put into the
10 catalog, yes, and we did want to be able to process purchase
11 orders to them.

12 Q So for those third-party vendors such as this Fairmont
13 type 07 product, were database or program changes necessary to
14 RIMS to accommodate that type of third-party product?

15 A Were database changes required, yes.

16 Q Were they made?

17 A Yes.

18 MR. ROBERTSON: Thank you. That's all I have.

19 THE COURT: Do you need him back?

20 MR. McDONALD: Yes, Your Honor.

21 THE COURT: Mr. Johnson, they're going to need you
22 back for another part of the case, so there's no need for you
23 to stay here in Richmond as much as we'd like to have you. But
24 you'll have to come back, and you'll be excused temporarily if
25 you agree to come back. They'll give you notice and get you

1 down here, pay your expenses to come.

2 THE WITNESS: Can I ask a question?

3 THE COURT: Yes.

4 THE WITNESS: I'm going to be out of the country at
5 the end of the month. I hope this doesn't interrupt that.

6 THE COURT: I hope it doesn't, too. They may be
7 flying you back from Europe.

8 THE WITNESS: It's the Caribbean, it's not Europe.

9 THE COURT: I will talk to them about how to handle
10 it in a way that will get you -- when is your departure?

11 THE WITNESS: My wife and I are leaving the last week
12 of January.

13 THE COURT: What day?

14 THE WITNESS: I think it's the Monday.

15 THE COURT: You give them the date, and we'll talk
16 about it.

17 THE WITNESS: Thank you.

18 THE COURT: We'll figure out a way to keep you from
19 missing a vacation.

20 THE WITNESS: I'd appreciate it.

21 THE COURT: I don't want to be named in any civil
22 action. All right. With that understanding that we'll work
23 around your schedule, you'll agree to be back, do you?

24 THE WITNESS: Yes.

25 THE COURT: Thank you. You are excused. All right,

1 ladies and gentlemen, we'll take the afternoon recess. We'll
2 take 20 minutes. Take your notebooks with you. Please be
3 seated while the jury is being excused.

4
5 (Jury out.)

6
7 THE COURT: All right, you can be excused, sir. Now,
8 what are you going to do next, Mr. Robertson?

9 MR. ROBERTSON: We have about our infringement
10 expert, Your Honor, Dr. Weaver.

11 THE COURT: So we're going to get started with him.

12 MR. ROBERTSON: Yes, sir. There's a number of
13 exhibits involved. I don't want it to appear intimidating when
14 it's brought in. Some of them are large manuals, but he's
15 going to be referring to select pages, but I think it does
16 constitute eight volumes.

17 THE COURT: You don't need to give them to me, do
18 you?

19 MR. ROBERTSON: I certainly hope not.

20 THE COURT: I don't think I need them unless I have
21 to rule on something. What I do want -- have I got all of his
22 reports?

23 MR. ROBERTSON: Expert reports?

24 THE COURT: Yes.

25 MR. ROBERTSON: I believe we have a set here.

1 THE COURT: Okay, because if I get an objection
2 because something is beyond the scope of the report, I need the
3 report to deal with it.

4 MR. ROBERTSON: I understand, Your Honor.

5 THE COURT: I don't know that we're going to have
6 that, but for each expert, I do need the reports. All right,
7 we'll take a 20-minute --

8 MR. ROBERTSON: Your Honor, may I raise one quick
9 housekeeping issue? You may recall Dr. Weaver had medical
10 issues and needs to stretch his back every once in a while.

11 THE COURT: He can stand up any time he wants to.

12 MR. ROBERTSON: All right, thank you, sir.

13 THE COURT: I mean if we need to take a break, we
14 will, but I hope we won't be here that long. All right, Mr.
15 Merritt?

16 MR. MERRITT: Yes, sir.

17 THE COURT: Get an appointment for these two with
18 your doctor for else we're all going to be infected.

19 MR. MERRITT: Judge, I need one, too. They've
20 infected me now. We'll get a group rate, too.

21 THE COURT: If you can't get yours, I'll go get mine.
22 Don't anybody come up this way.

23 MR. MERRITT: You don't mind if people have a cough
24 drop?

25 THE COURT: I've been taking them all day. I have

1 the same problem you have, but I don't have the cold. I just
2 have the cough. You help yourself, and if you have -- I find
3 that if you have cough medicine, just take the cough syrup and
4 take it under the table and pour it in a bottle and take a
5 slug. Don't be taking any GI gin. We'll be in recess.

6
7 (Recess taken.)

8
9 THE COURT: All right, next witness.

10 MR. ROBERTSON: Yes, Your Honor. Plaintiff would
11 call Dr. Alfred C. Weaver with respect to the issues of
12 infringement, Your Honor.

13 THE COURT: Ladies and gentlemen, Dr. Weaver has had
14 some back surgery and from time to time may just need to
15 stretch up and move around, so don't be surprised if that
16 happens. That's perfectly all right.

17
18 **ALFRED C. WEAVER,**
19 a witness, called by the plaintiff, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ROBERTSON:

23 Q Good afternoon, sir. Could you please state your name for
24 the record?

25 A Alfred C. Weaver.

1 Q And can you tell us, please, your current occupation.

2 A I'm a professor of computer science at the University of
3 Virginia.

4 Q And what courses do you teach or have you taught at the
5 University of Virginia?

6 A There's been a lot of those. C++ programming, Pascal
7 programming, operating systems, trustworthy computing,
8 federated trust systems, electronic commerce, and internet
9 commerce.

10 Q Have you taught courses in microcomputer architecture?

11 A Yes. That was one of the very first ones.

12 Q How about database architecture?

13 A Yes.

14 Q You mentioned electronic commerce. Can you tell us what
15 you mean when you use that term?

16 A Electronic commerce is using computer networks, nowadays
17 typically the internet, in order to buy and sell products or
18 services.

19 Q Did you start a program at the University of Virginia with
20 respect to electronic commerce?

21 A Yes, I did. That was 1995.

22 Q Can you briefly describe for us your educational
23 background starting with college?

24 A Sure. So I have a Bachelor of Science degree from the
25 University of Tennessee in 1971 with a major in engineering

1 science. That was as close as you could get to computer
2 science back then.

3 Then I went to the University of Illinois, and I have a
4 Master's degree in computer science from Illinois in 1973, and
5 then I stayed there for my Ph.D., so I have a Ph.D. in computer
6 science from the University of Illinois awarded in 1976.

7 Q So how long have you worked in the computer science field?

8 A I worked as a graduate student starting in 1971 and as a
9 professor in 1976.

10 Q And at the University of Virginia, can you tell me some of
11 the positions you've held there, sir?

12 A Yes. I'm currently professor of computer science, and my
13 newest job is I'm director of the university's Applied Research
14 Institute.

15 Q And did you ever serve as the chairman of the University
16 of Virginia department of computer science?

17 A Yes, I did back. That was back in 1984 and '85.

18 Q Have you held any positions outside of the university that
19 are recognized in the field of computer science?

20 A Sure. I was a consultant to NASA, and I lived in Houston
21 for a year and worked on the international space station and
22 was one of the designers of the computer networks that run the
23 space station.

24 Q Are you a member of the IEEE?

25 A I am. That's the --

1 Q I was going to say, what is that organization?

2 A Okay. That's the Institute of Electrical and Electronics
3 Engineers. It's one of the two big organizations that
4 represents computer science professionals. It's about 300,000
5 members. I am a fellow grade in that organization, and that's
6 an honor that's given to maybe one percent of the membership.

7 I've been a member of IEEE for 35 years at least, and one
8 of the organizations within that is the computer society. I've
9 been a member of the computer society for 30 years. The
10 computer society publishes a magazine called *IEEE Computer*.
11 I've been on the editorial board for that magazine for nine
12 years.

13 Q Other than your teaching responsibilities at the
14 University of Virginia, do you have any other responsibilities
15 as a professor there?

16 A Sure. We have to conduct research and provide
17 professional service, so in the research department, I have
18 supervised over 125 research projects. I've brought in more
19 than \$20 million in research funding to the university, and
20 I've supervised at least 65 Master's and Ph.D. students.

21 Q Have you authored or co-authored any books on computer
22 science or systems or networks --

23 A I have.

24 Q Let me just finish. -- databases or internet and
25 eCommerce?

1 A Yes, I have. So I've written two books and ten book
2 chapters and I think 150 peer-reviewed journal and conference
3 publications.

4 Q Have you ever consulted for any companies in industry?

5 A Sure. Microsoft, General Electric, Lockheed Martin,
6 Honeywell, e-Systems, and some more.

7 Q All right. Thank you. What other areas do you consider
8 to be areas that you have any specialized training or
9 expertise?

10 A So it's computer science in general, and then more
11 specifically, computer networks, computer architecture,
12 computer network protocols, electronic commerce, computer
13 networks, and the internet.

14 Q Dr. Weaver, are you the named inventor on any patents?

15 A I am.

16 Q Can you tell me just the general subject matter.

17 A This is a computer controlled process control system, and
18 that patent arose from my Ph.D. dissertation.

19 Q Have you ever been an expert in a patent case before?

20 A Yes.

21 Q Approximately how many occasions?

22 A Six.

23 Q Have you ever had, been required to testify in court
24 before?

25 A I have.

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1 Q How many occasions?

2 A Four.

3 Q Okay. Have you ever testified in federal court in the
4 Eastern District of Virginia?

5 A Yes.

6 Q Just can you briefly tell us a little bit about those
7 cases?

8 A Well, they were all patent infringement cases, and there
9 was one before Judge Brinkema in Alexandria, one before Judge
10 Spencer here in Richmond, and one before Judge Friedman down in
11 Norfolk.

12 Q Can you tell me in those patents cases, did they involve
13 computer science issues?

14 A Absolutely.

15 Q Were you qualified as an expert in those cases?

16 A Yes.

17 Q You mentioned four. Was there another one?

18 A Yes.

19 Q What would that be?

20 A There was a case about data theft, and that was heard by
21 Judge Ellis in Alexandria.

22 MR. ROBERTSON: Your Honor, I would proffer Dr.
23 Weaver as an expert in the fields of computer science and
24 systems networks, databases, and electronic commerce. Should I
25 move forward, Your Honor?

1 THE COURT: Just a minute. I'm not snoozing. I'm
2 taking notes on something. All right, do you have any
3 objections to his being qualified as an expert in those areas,
4 or do you wish to voir dire the witness?

5 MR. McDONALD: I have no objection, Your Honor.

6 THE COURT: Ladies and gentlemen, Dr. Weaver is
7 accepted as an expert in computer science, computer
8 architecture, computer systems, computer networks, databases,
9 computer databases, and in electronic commerce. He may testify
10 in those areas as an expert.

11 There will be other experts who testify in the case,
12 and I'll tell you now that expert witnesses are people who can
13 give opinions if the opinions will help you in deciding a case,
14 an issue in a case, or in understanding the evidence. Most
15 witnesses can't give opinions, but experts are people who are
16 qualified by reason of training or experience or education in
17 some technical or scientific area, and he's been so qualified,
18 so he and the other experts who will appear will be able to
19 give you opinions.

20 Expert witnesses' testimony should be assessed in
21 accord with the same rules that I told you about earlier when
22 you were deciding the credibility of witnesses, and I'll give
23 you some more instruction later, but the bottom line is you can
24 credit and accept an expert's opinion in whole, in part, or
25 reject in whole or in part, depending upon what your assessment

1 is of the credibility of the witness, and so with those
2 reminders, we'll proceed and have Dr. Weaver -- excuse me. I
3 think they gave me something -- Dr. Weaver testify at this
4 time.

5 Q Dr. Weaver --

6 THE COURT: There's another thing you might as
7 well -- I'm sorry, Mr. Robertson, but there's another thing you
8 might as well understand at this time, too. The experts in
9 this case, preparatory to coming to trial, have given expert
10 reports, and those reports aren't coming into evidence, but
11 there may be and sometimes are objections to people giving
12 testimony beyond the scope of what they said in their expert
13 reports, and I have to rule on that, and in doing that I either
14 will hold you up for a minute or I'll ask you to adjourn
15 depending on how long I think it's going to be in making that
16 ruling.

17 I don't know that we'll have that problem, but it's
18 not infrequent, and I thought you might as well understand the
19 process and understand why you might be asked to leave at this
20 stage if you are. All right, Mr. Robertson, please proceed.

21 MR. ROBERTSON: Thank you, Your Honor.

22 Q Dr. Weaver, have you been retained as a consultant --

23 THE COURT: Can you speak up? Are you having trouble
24 hearing?

25 MR. ROBERTSON: I'm losing my voice a little, Your

1 Honor. I'll try to deal with that.

2 Q Dr. Weaver, have you been retained as a consultant by the
3 patent owner, ePlus in this case, to analyze the three patents
4 at issue?

5 A Yes, I have.

6 Q Have you had occasions in the past to analyze these
7 patents with respect to other enforcement actions of them?

8 A Yes.

9 Q On how many occasions?

10 A Two others.

11 Q And so how long have you been acquainted with the subject
12 matter of the patents that are in suit here?

13 A About six years.

14 Q In this particular case, what issues were you asked to
15 analyze and offer opinions on?

16 A I was asked to, after reading and understanding the
17 patents-in-suit, to look at the Lawson system and to offer an
18 opinion about whether I thought that it infringed certain
19 claims of the three patents-in-suit, and I was also asked a few
20 questions about validity.

21 Q For today's purposes, we'd like to focus just on your
22 opinions with respect to infringement. We may have to have you
23 back to address issues of validity at another time. Are you
24 able to do that for me today?

25 A Yes.

1 Q All right, sir, were you provided a number of materials
2 that you relied on in order to present and render your opinions
3 in this case?

4 A As a matter of fact, I was. I have about 18 of these
5 boxes of documents sitting at home. So, there were -- the
6 documents that were produced by Lawson in discovery, there was
7 the testimony of Lawson witnesses, the deposition testimony of
8 Lawson customers, Lawson produced a demonstration system that I
9 spent a good bit of time with. You are going to see some
10 demonstrations later on.

11 There's training courses that I was able to find on the
12 internet that explain how the Lawson products work, and ePlus
13 also engaged another expert, Pat Niemeyer, who has taken a
14 long, hard look at the source code, and he and I have consulted
15 about what that source code means and does.

16 Q I just want to make sure we all understand some of the
17 terms there. One, you said you looked at documents produced in
18 discovery, so there were, you said, about 18 boxes. There were
19 pretrial proceedings in which the parties exchanged documents;
20 is that right?

21 A That's correct.

22 Q Please tell us you are not going to be offering into
23 evidence 18 boxes of documents?

24 A Good luck. I'm not.

25 Q There are a number of volumes behind me, though. Are

1 these some of the documents that you thought important in
2 rendering your opinions?

3 A Yes, they are.

4 Q You also mentioned there were depositions of both Lawson
5 personnel and Lawson customers. Deposition was in these
6 pretrial proceedings testimony taken under oath by these
7 individuals in response to questions by the various attorneys;
8 is that right?

9 A That's correct.

10 Q And I thought I understood you to say that you reviewed a
11 demonstration system, the Lawson S3 software that was produced
12 in the case?

13 A That's correct.

14 Q Did you actually utilize that demo software?

15 A Yes.

16 Q Will you be having any presentations with respect to how
17 that software operates?

18 A Yes. We did some demonstrations, and we did what you call
19 screen captures of those, so you'll be able to see recordings
20 of the realtime operation of the S3 procurement system.

21 Q You mentioned this expert, Mr. Niemeyer, who reviewed the
22 source code for the accused Lawson procurement systems. Did
23 you have an opportunity to review Mr. Niemeyer's report?

24 A I did.

25 Q I understood you to say you spoke with him; is that right?

1 A I was with him for four days.

2 Q And then you did some of your own independent research; is
3 that what I understand?

4 A That's correct.

5 Q Did you review the deposition of Lawson's technical
6 witness, Mr. Christopherson?

7 A Yes, I did.

8 Q Did you review the deposition of Lawson's other than
9 corporate witnesses, Mr. Lohkamp and Ms. Raleigh?

10 A I did.

11 Q Did you review technical manuals produced by Lawson in
12 this case involving the accused software?

13 A There were tons of them, yes, I did.

14 Q Let me go back for a minute and ask a question I should
15 have asked. What is source code?

16 A Source code is the written program, so it's the
17 instructions that you want the computer to follow, and then
18 that source code is what we call compiled into the actual
19 binary that runs the computer itself. So it's the instructions
20 that the computer follows.

21 Q And why did you find it important to have the source code
22 analyzed in order to render the opinions on infringement in
23 this case?

24 A Well, if you really want to know what a system is doing,
25 the source code is the answer.

1 Q Will we be able to see what the system is doing through
2 these demonstrations you're going to provide to the jury?

3 A Yes, I think it will be very clear.

4 Q I was asking about technical manuals produced by Lawson.
5 Let me identify a few if we could. Did you review the Lawson
6 purchase order guide for this accused product?

7 A Yes, I did.

8 Q Did you review the Lawson requisitions self-service user
9 guide for the accused product?

10 A Yes, I did.

11 Q Did you review Lawson's requisitions user guide for this
12 accused product?

13 A Yes, I did.

14 Q Did you review Lawson's inventory control user guide for
15 this product?

16 A Yes, I did.

17 Q Were you able to obtain and review the Lawson procurement
18 Punchout administrative guide?

19 A Yes, I did.

20 Q In trying to understand how the software operates, are
21 those technical guides the kinds of documentation that an
22 expert in your field would find relevant to understanding the
23 features and functionality of the software?

24 A Yes, they are.

25 Q And when you've done analyses involving these patents in

1 the past, have you reviewed those types of documents?

2 A Yes, I have.

3 Q Did you have an opportunity to review what are referred to
4 as Lawson's responses to prospective customers' requests for
5 proposals?

6 A Yes, I did.

7 Q From time to time, as a shorthand version I might be
8 referring to those as RFPs.

9 A That's the standard abbreviation.

10 Q You are familiar with RFPs, are you?

11 A Yes.

12 Q In a your capacity as a professor at University of
13 Virginia, have you ever had to deal with RFPs?

14 A I think the very first month that I was at Virginia, I had
15 to work with RFPs.

16 Q Did you have review any testimony -- let me step back.
17 What do you understand and can you explain to the jury what an
18 RFP is?

19 A Okay. So, of course, when you want to buy something
20 simple from Best Buy, you just go and get it, but if you are
21 trying to -- if you are a company, and you want to get
22 something complex like a computer system or complex computer
23 software, things that are going to probably be customized for
24 you, something you don't just buy off the shelf, then it's very
25 common for the company that wants to do the buying to write a

1 request for proposal that lists the specifications and the
2 requirements of the -- let's say the software, the
3 specifications and requirements of the software that you want
4 to buy, what's the functionality you need, what are the
5 capabilities that you require.

6 So you write that as an RFP, and you send that to vendors
7 that are in that field of business. Then the vendors read
8 the RFP --

9 MR. McDONALD: Objection, Your Honor. This is
10 outside the scope of his report.

11 MR. ROBERTSON: He's gone through extensive RFPs, and
12 they're referred to in his report. All of the RFPs are the
13 representations that are made in response by Lawson to what
14 customers asked them, the features and functionality.

15 He's identified several RFPs, Your Honor, that are
16 fully disclosed in his report. I have a number of citations if
17 you'd like when I start to get to them, but certainly he
18 discussed them at length in his report.

19 THE COURT: Discussed the RFPs in his report?

20 MR. ROBERTSON: Yes, the nature of the RFPs, what
21 their purpose is, and what Lawson's responses are to those
22 RFPs.

23 MR. McDONALD: He's identified RFPs, but he doesn't
24 portray himself as an expert as to what they are or what the
25 purpose of them is. There's no discussion of that in the

1 report.

2 THE COURT: Is there discussion of the RFPs that
3 Lawson sent to their customers? That's what you said, wasn't
4 it?

5 MR. ROBERTSON: Yes, sir.

6 THE COURT: So is there discussion of that in the
7 report or not?

8 MR. McDONALD: Yes, there is discussion of the Lawson
9 RFPs.

10 THE COURT: Objection overruled.

11 Q So when someone receives this RFP, what typically happens
12 next in the process?

13 A A potential vendor, a potential bidder on this project
14 would read the RFP, understand the questions that are in there,
15 and then write a response, and then -- so the potential vendor
16 would send that response to the RFP back to the potential
17 buyer.

18 The buyer would evaluate all of the responses that it
19 receives and presumably would pick one of those responses and
20 say, okay, that company will be the vendor of our product.

21 Q In the course of your review of the various testimony of
22 Lawson personnel, did you see any testimony that suggested
23 these responses, these answers that Lawson provides to
24 potential customers in this RFP process are vetted or reviewed
25 by Lawson's internal legal department and its engineers?

1 A Yes, I did.

2 Q And in your review of this deposition testimony, do you
3 recall any testimony concerning whether that process was done
4 for the purpose of determining that the responses were as
5 accurate and truthful as possible?

6 A Yes.

7 Q And in relying on these Lawson responses to RFPs, did you
8 accept that the responses were truthful and accurate to the
9 best of your ability?

10 A Yes. And, of course, that makes good business sense.

11 THE COURT: That's enough.

12 Q Let me ask you this: Did you review what is called
13 Lawson's statements of work?

14 A Yes.

15 Q And what -- are you familiar with what a statement of work
16 is?

17 A Yes. It's -- the statement of work is the contractual
18 underpinnings that says, okay, as the vendor, this is what I'm
19 going to do, this is my statement of work, these are the
20 functionalities and capabilities that I will provide.

21 THE COURT: Excuse me a minute, Mr. Robertson. You
22 have used and these lawyers have used and several witnesses
23 have used the term functionality. Can you just tell the jury
24 very briefly what you understand that to be and what you are
25 saying when you say that, and the same thing with respect to

1 the word capability. You used that, and so have a lot of other
2 people and the lawyers as if everybody knows what it is, and
3 I'm sure they do and you do, but the jury may not have that
4 background, and I know I don't, so I'll be glad to hear what
5 you have to say on both of those. What do they mean?

6 THE WITNESS: Sure, Your Honor.

7 THE COURT: As you are using them.

8 THE WITNESS: So with regard to functionality, it's a
9 question of whether or not a computer system can accomplish a
10 particular task. As for capability, it's whether a computer
11 system is able to perform. So functionality and capability are
12 quite similar.

13 Q Is it the case, then, just to follow up on the Court's
14 question, that a computer system might have the capability to
15 perform a certain task, but the user of that software doesn't
16 utilize all the tasks?

17 A Oh, absolutely.

18 Q But is the system, if it has that capability, still able
19 to perform it even if the end user doesn't employ that
20 particular feature or functionality of the software?

21 A Yes.

22 Q So software that's capable of doing a particular task,
23 even if that task isn't accomplished, in your view, does it
24 still have the structure necessary to satisfy elements in a
25 patent claim that specify what that functionality is even if

1 the end user never turns it on?

2 A Yes.

3 Q Now, I've asked you a lot about these documents, and I
4 don't want to repeat them all, but the types of documents we've
5 been talking about, technical manuals and guides and these
6 RFPs, are these the type of documents that an expert in your
7 field who is going to be offering opinions on the capabilities
8 and functionality of computer software would reasonably rely on
9 in forming opinions about the infringement issues that are at
10 issue in this case?

11 A Yes, they are.

12 Q And have you, in the past, in these patents and other
13 patents, relied on these kind of documents in rendering your
14 opinions?

15 A I have.

16 Q Did you have the opportunity to review the expert reports
17 of Lawson's technical witnesses?

18 A Yes, I did.

19 Q Did any of those materials assist you in formulating
20 opinions that you will be rendering in this matter?

21 A Yes, they did.

22 Q Just generally, you understand the patents to be directed
23 to the subject matter of electronic sourcing and procurement?

24 A I do.

25 Q Have you had any personal experience in your job to engage

1 in procurement activities at the University of Virginia?

2 A Yes. Back in 1995, my research group had a research
3 project from a company called Epcom where we were asked to
4 build an electronic ordering system with an electronic catalog
5 and electronic database, perhaps, that were available for sale.
6 So as a research project, we worked hard to do this, but it was
7 not commercially successful.

8 Q Have you ever had to engage in procurement activities the
9 old-fashioned way, using paper catalogs?

10 A Yes.

11 Q Can you tell us a little bit about what your experience
12 was in that area, sir?

13 A Sure. So when I arrived at the University of Virginia in
14 1977, I started our first microcomputer lab. So, bingo, I was
15 the guy who had to order all the equipment. So I started with
16 paper catalogs, like everybody else starts with back in that
17 time frame, and pick out computers or memory systems or
18 peripherals that I think I need for my lab, and, of course, a
19 mere university professor doesn't have any authority to spend
20 money, so I have to go over to our purchasing department and
21 explain to them what it is that I want to buy.

22 And so the purchasing person would create a requisition,
23 and it would say NorthStar computer system. That was the
24 microcomputer of that age, and the purchasing specialist would
25 type up this document and send it to multiple potential vendors

1 and then wait for them to come back with bids, accept one, send
2 out a purchase order, and then see whether or not you got the
3 equipment that you wanted. I know there was one time where I
4 ordered equipment and never was available, so I didn't get what
5 I wanted.

6 Q Was this process time-consuming?

7 A Very.

8 Q Was it costly for you?

9 A Oh, yes. Costly in time and costly in personnel.

10 Q Was it efficient?

11 A No.

12 Q Can you tell us -- you've had an opportunity to read
13 through all the three patents-in-suit in some detail; is that
14 right?

15 A I have.

16 Q You've studied the background of the invention?

17 A I have.

18 Q And the summary of the inventions?

19 A Yes.

20 Q And you've looked at the description of the drawings?

21 A Yes.

22 Q And you've read the detailed description of the invention
23 which is some 20 or so columns?

24 A I have.

25 Q And you've read the claims that are involved in this case;

1 correct?

2 A Correct.

3 Q And understand that there are 12 representative claims
4 that are at issue in the three patents that are Plaintiff's
5 Exhibit Numbers 1, 2, and 3?

6 A I do.

7 Q So you reviewed the '683 patent, the '516 patent, and the
8 '172 patent; correct?

9 A I have.

10 Q So do you feel you have an understanding, having worked
11 with these patents and been involved in these for the last six
12 years, with respect to the subject matter and what's disclosed
13 and what is claimed?

14 A I do.

15 Q Did you also have an opportunity to review the Court's
16 construction of certain claim terms that were in dispute among
17 the parties?

18 A Yes.

19 Q And you received a copy of that?

20 A Yes.

21 Q Do you have -- you are holding a piece of paper in your
22 hand. Is that the glossary of terms that has been -- is that
23 the glossary of terms?

24 A Yes, it is.

25 Q Just so you are informed, the jurors have that glossary of

1 terms in their binders, in their book which I believe is at
2 tab --

3 THE COURT: Tab six.

4 MR. ROBERTSON: Thank you, Your Honor.

5 Q Let me ask, in rendering the opinions you're going to give
6 with respect to the infringement, did you apply the Court's
7 claim construction or some other claim construction?

8 A I used the Court's claim construction.

9 Q Did you attempt to faithfully use that claim construction
10 when you were looking at the functionality and capability of
11 Lawson's software?

12 A Yes, I did.

13 Q Did you come up with any of your own constructions
14 contrary to the Court?

15 A No.

16 Q So just back to the basic subject matter, at a high level
17 of these patents that were issued, what do you consider the
18 benefits to be realized by the inventions over this procurement
19 process that you have described?

20 A Well, by computerizing the process, by making the catalogs
21 electronic, by being able to search them electronically, by
22 being able to create requisitions and purchase orders, you
23 reduce the economic friction in an electronic commerce system.
24 You make it more efficient, you make it more time-conserving,
25 and you save money.

1 Q How about the ability to search multiple vendors at the
2 same time?

3 A Oh, of course. Searching multiple catalogs gives you the
4 ability to cross compare, to comparison shop.

5 Q What about the requisitioning and ordering module that
6 permits you to go -- to do multiple requisitions from items
7 from multiple vendors and then issue multiple purchase orders?
8 Do you see any benefits to that?

9 A If you go back to the example that I had where I had to
10 get requisitions issued to each vendor and then a purchase
11 order had to go individually to each vendor, that's a lot of
12 time and effort. So the ability to put everything you want on
13 one purchase requisition electronically and then have the
14 computer system break that requisition up into however many
15 purchase orders are appropriate, typically one purchase order
16 per vendor with however many orders from the requisition,
17 that's a real benefit.

18 Q The patents also discuss ability to gain approvals for
19 requisitions in order to have the process flow go smoothly and
20 quickly and more efficiently?

21 A Yes, they do.

22 Q Are there aspects of the inventions generally that relate
23 to determining whether there's an item available in the
24 vendor's inventory?

25 A Oh, yes. We're going to see that in the patent claims.

1 Q That is an important aspect of the invention in your view?

2 A Yes, it is.

3 Q Dr. Weaver, in determining and preparing your expert
4 reports in this case, and in preparing the opinions that you're
5 going to be offering, did you consider what a person of
6 ordinary skill in the art would be in the subject matter of
7 these patents?

8 A Yes, I did.

9 Q Why did you do that?

10 A Well, it's required that the patents be seen from the lens
11 of this hypothetical person of ordinary skill in the art.
12 That's a person who can read and understand the patents and
13 implement whatever is there.

14 Q Now, this person of ordinary skill in the art from which
15 we have to view these patents at issue and the claims that
16 we're going to be talking about, is this a real person or a
17 hypothetical construct?

18 A It's a hypothetical construct.

19 Q And when you look at and try to determine who this person
20 of ordinary skill in the art would be, what time frame were you
21 looking at?

22 A Well, that has to be -- in the case of these patents, that
23 would have to be 1993 to 1994, during the period of the
24 invention.

25 Q And is that when the patents were conceived and then

1 reduced to practice?

2 A Correct.

3 Q And you are familiar that the filing date of this patent,
4 these patents has what's called a priority date back to 1994?

5 A Yes.

6 Q Can you tell the jury what you understand that term to
7 mean, a priority date?

8 A That means that the protection of the patents that we'll
9 talk about later, what the claims mean, goes back to that date,
10 the filing date.

11 Q So in undertaking your study of these patents to determine
12 who this hypothetical person of ordinary skill in the art would
13 be for purposes of viewing the context, the historical context
14 where these patents were, did you come to any conclusions?

15 A I did.

16 Q And can you tell us what your opinion is as to who this
17 hypothetical person of ordinary skill in the art would be for
18 these ePlus patents?

19 A So based on my experience, this person would be a college
20 graduate with a degree in computer science or something
21 related, like electrical engineering, and would have a year or
22 two of practical experience with writing software and
23 understanding the flow of information that is necessary for the
24 purchase of goods and services.

25 Q And did you apply that person to the opinions you're going

1 to be offering in this case both on the issue of infringement
2 and on the issue of validity?

3 A Yes, I did.

4 Q Did you have an opportunity to review who the hypothetical
5 person of ordinary skill in the art would be under Lawson's
6 expert's perspective?

7 A Yes, and it's similar.

8 MR. ROBERTSON: Mr. McDonald, do you want to agree on
9 that if we can at this point?

10 MR. McDONALD: I thought we already did.

11 MR. ROBERTSON: All right.

12 THE COURT: I thought you stipulated that, haven't
13 you?

14 The person of ordinary skill in the art, ladies and
15 gentlemen, is something you'll hear from these experts, and
16 it's been explained what it is, and there'll be instructions
17 for you later, but that person is a person, the parties
18 agree -- excuse me -- who is a college graduate with a degree
19 in computer science or electrical engineering or like studies
20 with a year or so of experience writing software and
21 understanding -- and who understands the procurement process,
22 electronic procurement process; is that right, counsel?

23 MS. STOLL-DeBELL: I think it's close enough, Your
24 Honor.

25 THE COURT: Good enough for government work.

1 MS. STOLL-DeBELL: I think so.

2 Q Let me ask you this: Are you familiar with that person of
3 that level of skill and knowledge during the time period we're
4 discussing?

5 A Yes. I was teaching people like that.

6 Q In the 1993 time frame?

7 A Right, 1993, 1994, yes.

8 Q Did you work on any projects during that period for any
9 companies in which the subject, type of subject matter of this
10 might involve persons who had similar experience and education?

11 A Right. So I mentioned this research project. There was
12 this company call Epcom that wanted to build an electronic
13 distributorship, and so they came to my research group, and the
14 person I hired to work on this was two years out of the
15 computer science bachelor's degree, and she and I worked on the
16 design of this system whereby there was an electronic catalog,
17 and a consumer using the internet could look at the catalog and
18 could order from it and kind of a rudimentary inventory
19 management.

20 Q Why don't we go to Plaintiff's Exhibit Number 1.

21 THE COURT: Are you going to get into infringement
22 opinions now?

23 MR. ROBERTSON: I'm going to get into a little bit
24 more about high level overview, and then I'm going to start
25 looking at specific claims, Your Honor, within a few pages.

THE COURT: I think it's a convenient place to break for the jury. They've been at it awhile today, and it's a good place to do it, so, ladies and gentlemen, once again, if you'll give your pads to Mr. Neal, we'll have them for you tomorrow.

We'll start at nine o'clock in the morning, and we'll have the -- you'll remember my instructions not to discuss the matter with anyone, and drive carefully.

Now you've been able, Mr. Chalmers -- is it okay to get back? Is that hour okay with you?

JUROR: Yes, sir.

THE COURT: You are the one who has the furthest distance to go, although some of them, depending on where they live in Henrico County, may have a worse commute than you do. Thank you very much, ladies and gentlemen.

(Jury out.)

THE COURT: All right, now, you all -- one of the things that occurs to me we didn't touch base on was this questioning in respect of validity on the topic of graphic user interface, and you objected to any discussion of it in connection with anything, validity or infringement, and said -- and it came up in terms of a claim term construction, in particular I think one of the means plus function terms. I'm not sure how it came up. Anyway, it came up in earlier

1 questioning.

2 MR. MERRITT: Is there anything we need to excuse the
3 witness for on this?

4 THE COURT: No. I'm going to say we need to do -- we
5 need to get briefing on it if you all -- I told you I wanted
6 you to brief it, and I need to have you all deal with it.
7 You're going -- Dr. Weaver can be excused. He doesn't need to
8 sit here and go through all this.

9 You can step down, sir, and we'll see you in the
10 morning at nine o'clock.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Have you rethought whether you have any
13 objection to him raising it and I need to have briefs on it,
14 Mr. Robertson, in view of the way your questioning has gone and
15 his questioning has gone so far?

16 MR. ROBERTSON: Your Honor, you must forgive me.
17 It's late in the day, and I am not sure I'm understanding the
18 issue being raised, so if you could restate it for me. Maybe
19 Mr. McDonald and I can work out some sort of accommodation
20 before briefing.

21 THE COURT: Basically there was questioning that I
22 held had to do with the invalidity question over an objection
23 that you raised, and it was one of your witnesses early on,
24 maybe Mr. Momyer, and it had to do with the meaning of graphic
25 user interface, and it was being -- his question related, you

1 said, to the topic of invalidity, and I concluded that it did
2 after hearing what he had to say about the topic and said that
3 we will -- you can deal with that in his -- when he has an
4 opportunity to present his case on invalidity, and I'll have
5 you brief it before we get to that point.

6 And I am now asking you whether you all have resolved
7 that question or whether I need to have briefing, and if so, I
8 want to set the briefing schedule.

9 MR. McDONALD: What I would suggest and see if Mr.
10 Robertson agrees, we'll try to dig out that part of the
11 transcript where that's discussed, so we will figure out what
12 the issue is. Give us a chance to talk. I think we have a
13 couple days before the validity case starts. Pretty good
14 chance we can work it out, at least narrow it down.

15 THE COURT: It was fairly early on in Momyer's
16 testimony if I remember correctly, but I'm not sure of that,
17 that this issue came up, and then you maybe perhaps can agree
18 on the schedule.

19 Based on what you know about your case, where are
20 you, what are you estimating is going to be the concluding
21 moment?

22 MR. ROBERTSON: I'm shooting for Tuesday, Your Honor,
23 probably midday, but we'll have to see --

24 THE COURT: How come we lost all this time, because
25 you were shooting for Friday the other day.

1 MR. ROBERTSON: I don't think I made that
2 representation, Your Honor.

3 THE COURT: You don't think you did?

4 MR. ROBERTSON: I'm pretty sure I made the
5 representation that I did not think I could get done by Friday.
6 That's still my best guesstimate on where we are.

7 THE COURT: All right.

8 MR. ROBERTSON: I'm going to try and move things
9 along and get those doggies rolling, but Dr. Weaver has a lot
10 of ground to cover as you might imagine.

11 THE COURT: Today is what day? Did it change? Today
12 is Wednesday, isn't it? So he goes to tomorrow.

13 MR. ROBERTSON: Well, we still have several Lawson
14 witnesses to call that involve infringement, we have the
15 customer depositions that involve infringement.

16 THE COURT: You all have honed those down now, have
17 you?

18 MR. ROBERTSON: We have, I think, made substantial
19 progress in cooperating in that respect.

20 THE COURT: Okay. All right. Just so I know where
21 we stand. I think he needs to know where you stand, too. All
22 right, we'll -- again, you can leave whatever you want to leave
23 here, and at nine o'clock we'll start again tomorrow morning.
24 Thank you very much.
25

(Court adjourned.)